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March 25, 2015

To: The Honorable Mark M. Nakashima, Chair,
The Honorable Jarrett Keohokalole, Vice Chair,
Members of the House Committee on Labor & Public Employment

Date: Friday, March 27, 2015
Time: 10:10 a.m.
Place: Conference Room 309, State Capitol

From: Elaine N. Young, Acting Director
Department of Labor and Industrial Relations (DLIR)

Re: HCR69/HR36 Requesting an Internal Review of the Department of Labor and Industrial Relations' Hawaii Occupational Safety and Health Division.

I. OVERVIEW OF PROPOSED LEGISLATION

HCR69 requests the Department of Labor and Industrial Relations (DLIR) to perform an internal review of the Occupational Safety and Health Division (HIOSH) rules and policies when confronted with an incident that poses an immediate danger to life or health and to submit a report of its findings and recommendations on improving responsiveness by HIOSH including any proposed legislation to the Legislature no later than twenty days prior to the start of the 2016 regular legislative session.

The Department is opposed to the measure as HIOSH is already under federal scrutiny as part of an Operational Status Agreement with the Occupational Safety and Health Administration (OSHA)

II. CURRENT LAW

There is no current statute requiring an internal audit of HIOSH rules and policies when confronted with an incident that poses an immediate danger to life or health. Section 12-10-61(d), Hawaii Administrative Rule, pertaining to Filing of reports, allows electronic submission of reports.

III. COMMENTS ON THE HOUSE RESOLUTION

HCR69/HR36 states that "HIOSH reported an incidence rate of 3.8 nonfatal occupational injuries and illnesses per 100 full-time workers and 11 fatalities from state and local industries due to transportation incidents, falls, trips, slips and exposure to harmful substances or environments." HIOSH agrees that 11 fatalities in one year is 11 fatalities too many. HIOSH is trying very hard to lower this number. For comparison purposes HIOSH offers the following table which includes the other states in Region IX as well as statistics from states which have similarly sized workforces. The states marked with (F) are under OSHA jurisdiction.

2013 Statistics	Incidence Rate	Fatalities	Number of Workers
HAWAII	3.8	11	617,600
Alaska	4.2	22	335,800
Arizona	3.5	65	2,515,200
California	4	373	15,147,400
Nevada	4.1	33	1,175,700
Vermont	5.3	4	306,000
(F) Maine	5.3	14	601,700
(F) New Hampshire	not available	12	640,100
(F) Idaho	not available	27	638,300

The term, "immediately dangerous to life and health," (IDLH) is used by HIOSH, Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH) to apply to a toxic atmosphere in which respirators must be worn while the employee works in it. The definition used in the OSHA regulation on permit-required confined spaces is, "Any condition that poses an immediate or delayed threat to life or that would cause irreversible adverse health effects or that would interfere with an individual's ability to escape unaided from a permit space. Such materials in hazardous quantities are considered to be "immediately dangerous to life or health." [29 CFR 1910.146] A table of chemicals with IDLH levels can be found here:

<http://www.cdc.gov/niosh/idlh/intridl4.html>.

HIOSH records all contacts from complainants from such diverse sources as phone calls, emails, letters, referrals from OSHA and other government entities, faxes, visits and so forth. This is part of HIOSH's complaint handling procedures which can be found here:

<http://labor.hawaii.gov/hiosh/files/2013/01/FileAComplaint-rvsd-12-18-14.pdf> .

Information pertaining to the Operational Status Agreement between OSHA and HIOSH is available at: <http://labor.hawaii.gov/hiosh/home/proposed-osh-hiosh-agreement/>

**Testimony to State Legislature, HR 36, REQUESTING AN
INTERNAL REVIEW OF THE DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS' HAWAII OCCUPATIONAL SAFETY &
HEALTH DIVISION.**

Honorable members of the Legislature,

My name is Harlan Kanoa N Sheppard. I sincerely thank Rep. Takashi Ohno for advancing my concerns regarding HIOSH for further review.

To preface this comment, I have read the comment by Diantha Goo, DLIR/HIOSH Administrator. While I appreciate her acknowledgement of poor customer service, I feel that the department still has questions to answer.

I'll try to be brief. The first time I turned to HIOSH, it cost me my job. It cost others who cooperated with me to lose their jobs. They didn't respond in a timely manner, and it was an urgent matter when I first called.

Later, I had reason to turn to Federal OSHA. I was working somewhere, and there was a very bad accident. It was preventable, but people could have died. The incident was smoothly handled by Federal OSHA, but somehow the ball ended up with HIOSH again.

I never heard back from HIOSH about how it turned out. Last I heard, the inspector couldn't negotiate entry to the property.

So far, the dumbest thing I've done in my life was to trust that whistleblower laws would protect me. It's cost me two jobs. A career, probably. I haven't found out if anyone will hire me yet because I was injured by an inattentive co-worker at my last job, an injury that persists to this day.

There is something wrong here. The system is not working the way it was meant to. Please look into this. Employees have a reasonable expectation to be able to work without adverse or deleterious consequences to one's health. In the same vein, if their attempts to solve things within their own company fail, there should be someone there to help. Someone who can and will help.

The best I can hope for at this point is that through my testimony, this doesn't happen to someone else.

Sincerely,
Harlan Kanoa N Sheppard